

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

May 17, 1994

Michael C. Black
Attorney at Law
265 West Seventh Street, Suite 201
St. Paul, Minnesota 55102

Erica Jacobson
Assistant Attorney General
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130

RE: State v. RSJ, Inc. and Joseph Schaefer;
OAH Docket No. 69-1700-8425-2.

Dear Counsel:

I have received arguments from the Department of Human Rights and Joseph M. Schaefer on whether the automatic stay provisions of 11 U.S.C. 362(a) apply to the above-entitled matter. The only provision of the Bankruptcy Code that would affect the automatic stay provision is 11 U.S.C. 362(b)(4), which exempts actions brought "by a governmental unit to enforce such governmental unit's police or regulatory power" from the automatic stay. The issue is whether the complaint here, brought by the Department of Human Rights, falls within the exemption of 362(b)(4).

The Eighth Circuit Court of Appeals has examined the issue of exemptions from the automatic stay in the context of Equal Employment Opportunity Commission (EEOC) matters. In EEOC v. Rath-Packing Company, 787 F.2d 318, 325 (8th Cir. 1986), cert. denied 479 U.S. 910 (1986), the Court of Appeals stated:

By contrast, "EEOC does not function simply as a vehicle for conducting litigation on behalf of private parties; it is a federal administrative agency charged with the responsibility of investigating claims of employment discrimination and settling disputes." Occidental Life Insurance Co. v. EEOC, 432 U.S. 355,

AN EQUAL OPPORTUNITY EMPLOYER

State v. RSJ, Inc. Letter
May 17, '1994
Page 2

368 , 97 S Ct . 2447, 2455 , 53 L. Ed. 2d 402 (1 977) . Thus, "[w]hen the EEOC acts, albeit at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interest in preventing employment discrimination." General Telephone Co. v. EEOC1 , 446 U.S. at 326, 100 S.Ct. at 1704. When EEOC sues to enforce Title VII it seeks to stop a harm to the public- invi dious employment discriminati on which is detri mental to the welfare of the country as violations of environmental protection and consumer safety laws, which are expressly exempt from the automatic stay. We therefore hold that the automatic stay provision did not apply to this Title VII action brought by EEOC.

This principle has been applied in recent litigation. Patterson v. Newspaper & Mail Deliverer's Union , 138 B.R. 149 (S.D.N.Y. 1992)(EEOC consent decree exempt under 362(b)(4) from automatic stay).

The decision in Rath has not been superceded by any subsequent case, although some cases have distinguished RATH when different claims were pursued (e.g. False Claims Act, ERISA). one case, however, comes to the opposite result. The exemption under 362(b)(4) was held inapplicable to a charge of handicap and age discrimination under the Illinois Human Rights Act. In the Matter of Interco Incorporated 152 B.R. 858 (Bankr.E.D.Mo. 1993). The Bankruptcy Court hale that the styling of the action (Finfrock v. Florsheim shoe company Incorporated] and the relief requested required a conclusion that the proceeding was for the enforcement of private rights before the Illinois Human Rights Commission. The Bankruptcy Court refused to apply the exemption in 362(b) 4). The decision in Interco does not claim to overrule or distinguish Rath. In fact , no case i s c ited in the ent i re opi n i on to support the denial of the exemption.

The Judge concludes that Rath is the controlling precedent and the exemption to the automatic stay applies in this matter. The reasoning in Rath applies equally to Minnesota Human Rights Act proceedings and to EEOC proceedings. The Human Rights Act is intended to eliminate invidious discrimination. State by McClure v. Sports and Health Club 370 N.W.2d 844, 853 (Minn. 1985).

Even if the holding in Interco is applied here, the result is the same. This matter is styled as the State of Minnesota by David Beaulieu,

Commissioner, Department of Human Rights, Complainant v. RSJ, Inc., d/b/a
Jose's American Bar & Grill, and Joseph Schaefer, Respondents. The
charging

parties are not mentioned in the caption. Part of the relief requested
is

that Respondents cease and desist from illegal discrimination and that they
pay a civil penalty to the State. Neither of these remedies are
available in
suits over private rights.

State v. RSJ, Inc. Letter
May 17, 1994
Page 3

Respondents assert that the Department is trying to preserve this matter before an Administrative Law Judge when it should be before a bankruptcy Judge. The law is we II settled that reducing a claim to a dollar amount is different from enforcing a judgment. See NLRB v, P*I*E Nationwide Inc., 923 F.2d 506, 512 (7th Cir. 1991). There is no basis for staying this matter. The hearing will be held as scheduled. If, ultimately, money damages are awarded, they will be subject to the bankruptcy proceeding.

I have received Complainant's Motion to compel attendance at a deposition. While this letter may have mooted the need for a motion on this issue, I shall allow ten days for a response. If a response to the Motion is to be filed, it must be in my office by May 26, 1994.

Sincerely,

STEVE M. MIHALCHICK
Administrative Law Judge

(612) 349-2544